

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VIRGIL APODACA, SR.,

Defendant.

8:16CR87

MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's Motion for Compassionate Release, ECF No. 213. The Defendant notes that he suffers from a variety of serious infirmities and he fears adverse health consequences if exposed to coronavirus.

Section 603 of the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018), amended 18 U.S.C. § 3582(c)(1)(A) to permit defendants to move a sentencing court for modification of sentence "after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier[.]"

Section 3582(c)(1)(A) also provides in pertinent part:

[T]he court . . . may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

- (i) extraordinary and compelling reasons warrant such a reduction;
- . . .

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission[.]

The Defendant has not demonstrated that he has exhausted his administrative remedies as required by § 3582(c)(1)(A). Nor has he demonstrated that he is at any risk of exposure to coronavirus. He is currently housed at the Bureau of Prisons Medical Facility in Springfield, Missouri. As of the date of this Memorandum and Order, there has been only one person who tested positive for coronavirus at that facility, and that person has since recovered. See <https://www.bop.gov/coronavirus/>

Regardless, the factors the Court must consider under 18 U.S.C. § 3553(a) would preclude any reduction in the term of the Defendant's incarceration. At the time of sentencing, on February 13, 2017, the Defendant suffered from the same serious medical conditions that he describes in his pending Motion, including end-stage renal failure requiring dialysis. Despite his many physical infirmities, the Defendant demonstrated that he posed a clear, continuing, and imminent threat to the lives of others up to the time of his sentencing. The overarching goal of the Court when sentencing the Defendant was to ensure his isolation from society to incapacitate him from further criminal activity for the safety of others. Accordingly,

IT IS ORDERED:

1. The Defendant's Motion for Compassionate Release, ECF No. 213, is denied, with prejudice; and
2. The Clerk will mail a copy of this Memorandum and Order to the Defendant at his last known address and to the Warden of the Bureau of Prisons Medical Facility at Springfield, Missouri.

Dated this 14th day of July 2020.

BY THE COURT:

s/Laurie Smith Camp
Senior United States District Judge